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Symbolic Power: Political Rhetoric in a State of Exception

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Abstract

In their fight against terrorism, modern states seem to install a state of exception on a permanent basis. This chapter focuses on the role that notions connected to the Rule of Law play in key speeches delivered by two political leaders who had to defend exceptional measures in reaction to terrorist actions and threats: the former British Prime Minister Tony Blair and the current Prime Minister of Spain, Jose Luis Zapatero. Central research question is: how are the anti-terror measures justified in the speeches at hand? Are they, legally speaking, created ‘from nowhere’ would claim, or are they still somehow connected to positive law?

Key words: political rhetoric, state of exception, Rule of Law, terrorism, law and violence, human rights, Schmitt, Agamben, Blair, Zapatero,

1. War of the Words

The so-called ‘war on terror’ is not only fought with weapons and intelligence but, perhaps to an even greater extent, with words. By manipulating linguistic symbols political leaders are able, if they are successful, to mobilize popular support for their cause and to legitimize their actions (Edelman 1967). In order to pursue a war, there must be some sort of shared understanding of who are friends and who are foes and how the war must be waged. Generally speaking, the ‘war on terror’ is fought on behalf of ‘us’ people living in the ‘free world’ and directed against ‘them’ – an unspecified group of ‘terrorists’, presumably of a fundamentalist Islamic persuasion. Because states belonging to the ‘free world’ mostly are dedicated to the Rule of Law in one way or another, they are not completely free in their selection of means. Whereas the ‘terrorists’ may do whatever they like to spread terror on a global scale, political leaders in the West can only act and react with caution, as if their hands were tied (as the popular comparison goes). However, increasingly they resort to measures that – according to their critics (such as Chomsky 2006) – are at odds with fundamental principles of the Rule of Law. Here lies the big challenge for political rhetoric in our times: how to justify measures that apparently contradict everything ‘we’ stand for and believe in?

In their fight against terrorism, modern states seem to install a state of exception on a permanent basis. Special competencies are created that allow the authorities involved to

violate fundamental rights, such as *habeas corpus* and the freedom of speech, for an unspecified period of time. Agamben (2005, p. 6 and 50-51) denies that the state of exception is a “state of law”; it rather is an “emptiness of law,” a space “without” or “devoid of law,” in which nothing but a fictitious relation with the previously existing legal order can be established. Whereas, in the old days, the state of exception aimed at restoring normalcy, governments seem nowadays to maintain a state of exception on a permanent basis. Especially with the institutionalization of abortion and euthanasia and the declaration of a global war on terrorism, the “juridically empty” space of the state of exception threatens to “coincide with the normal order.” The state of exception is institutionalized on a permanent basis; the exception becomes the rule.

In our chapter, we will examine the role that notions connected to the Rule of Law play in key speeches delivered by two political leaders who had to defend exceptional measures in reaction to terrorist actions and threats: the former British Prime Minister Tony Blair and the current Prime Minister of Spain, Jose Luis Zapatero. We have chosen to focus on these two political leaders, because they both represent countries with longtime experiences with terrorism – IRA and ETA – and, moreover, they employ in their speeches two opposite rhetorical strategies: while Blair argues that exceptional times call for exceptional measures, Zapatero denies that there is anything extraordinary to his anti-terrorism approach.¹ In the speeches selected² they react on crucial political events during their leadership: the terrorist attacks on the World Trade Center in New York on 11 September 2001, the attack on a train station in Madrid on 11 March 2004, and the London bombings on 7 July 2005. Our central research question is: how are the anti-terror measures justified in the speeches at hand? Are they, legally speaking, created ‘from nowhere’, Agamben (following Schmitt 1996a) would claim, or are they still somehow connected to positive law? In section 2 and 3 we will analyze the rhetorical devices that Blair and Zapatero respectively use in order to justify exceptional measures that seem at odds with the Rule of Law. In this rhetorical analysis we explore two questions: How are ‘friends’ differentiated from ‘enemies’? What role, if any, do Rule of Law notions play in defending the measures at hand? In section 4 the two opposite rhetorical strategies will be compared and evaluated.

2. Blair’s Rhetoric of Exception

For Blair, 9/11 is a turning point both in the history of man and in his personal history as a leader. In a religious vein, he acknowledges that this attack, “without parallel in the bloody history of terrorism,” made him see his true vocation: “September 11th was for me a revelation” (speech 4). What was revealed to him, was his political mission as a world’s leader: “I feel a most urgent sense of mission about today’s world” (speech 3). His mission is to “re-order this world around us” (speech 1) or, more precisely, to restore the world’s order: “The global threat to our security was clear. So was our duty: to act to eliminate it” (speech 4). The world’s security is at stake, ‘our’ life as well as ‘our’ way of life.

Blair, a true champion of inclusive speech, frequently invokes a ‘we’. In different contexts this sign may denote different entities. As UK’s Prime Minister at the time representing the country he was, of course, authorized to speak on behalf of the British people

¹ This chapter is part of a series of articles on the rhetoric of exception. In subsequent articles we will analyze by other political leaders, such as former US President George W. Bush and current US President Barack Obama.

² A list of the speeches can be found in the appendix. Moreover, we have used occasionally some statements and interviews as an additional source of information (although we do not refer to them as such in the text). We have translated Zapatero’s statements into English.

and he often did so. In speeches delivered after the London bombings, ‘we’ refers in particular to the authorities involved in tracking down and prosecuting the offenders: “We will pursue those responsible not just the perpetrators but the planners of this outrage, wherever they are and we will not rest until they are identified, and as far as humanly possible, brought to justice” (speech 5). In his speech to the US Congress, ‘we’ functions as a sign of solidarity with the American people after 9/11: “And our job, my nation that watched you grow, that you fought alongside and now fights alongside you, that takes enormous pride *in our alliance* and great affection *in our common bond*, our job is to be there with you” (speech 3; italics added). Here, ‘we’ obviously refers to the alliance of British and American people who stand united in their fight against terrorism (as they once stood united against fascism).

In many cases, ‘we’ is used to denote an even wider circle of people: nothing less than “the entire international community” (speech 7C). People building this ‘we’ are not restricted to a certain space – let’s say, the Western part of the world – but are defined by the sharing of a particular set of convictions: “‘We’ is not the West. ‘We’ are as much Muslim as Christian or Jew or Hindu. ‘We’ are those who believe in religious tolerance, openness to others, to democracy, liberty and human rights administered by secular courts” (speech 7A). ‘We’ cherish freedom and democracy. Moreover, ‘we’ are tolerant toward people who think differently: “We are open societies. We feel enriched by diversity. We welcome dynamism and are tolerant of difference” (speech 7B). ‘We’ are not aggressive at all: “We are peaceful people” (speech 2). People like ‘us’ can also be found in the Arab and Muslim world:

Across the Arab and Muslim world such a struggle for democracy and liberty continues. . . . [We must] stand up for and not walk away from those engaged in a life or death battle for freedom . . . many Muslims, millions of them the world over, including Europe, who want what we all want: to be ourselves free and for others to be free also; who regard tolerance as a virtue and respect for faith of others as part of our own faith. (Speech 7A.)

According to Blair, “these are the true voices of Muslims and Arab people” (speech 7C). “They” are not our enemy but our friend in the fight for freedom and democracy. However, as inclusion always implies exclusion (cf. Lindahl 2004), not everyone in the “the entire international community” is ‘our’ friend. Just as there are friends *outside* the international community *stricto sensu* – ‘they’ who are like ‘us’, “our” similes in the Arab and Muslim world –, there are people who support the enemy *inside* this community by defending a “policy of benign inactivity” (speech 7A): “It is a posture of weakness, defeatism and most of all, deeply insulting to every Muslim who believes in freedom of the majority. Instead of challenging the extremism, this attitude panders to it and therefore instead of choking it, feeds its growth” (speech 7A). Fellow-citizens who are critical of the current American and European approach to terrorism, are (perhaps willy-nilly) contributing to the country’s destruction: “[Anti-Americanism or Euro-scepticism] are the surest route to the destruction of our true national interest” (speech 8). According to Blair, these “false friends” are siding with the enemy: “The problem we have is that a part of opinion in our own countries agrees with them” (speech 7B). “Them”, the “real” enemy, are the “terrorists”, also referred to as “religious fanatics” (e.g., in speech 1) or “extremists” (speech 3). “They” are a new kind of enemy without precedent in history: “In this century, a new and unconventional enemy has appeared: a global terrorism, based on a thoroughly warped misinterpretation of Islam, which is fanatical and deadly” (speech 8). In apparent contrast to conventional terrorist groups in Europe such as the IRA or the ETA, new Islamic terrorist groups not only aims at spreading insecurity but also in killing people for its own sake (cf. Mendes 2008, p. 17). This “new and unconventional” enemy is described as bloodthirsty, barbarous and boundless: “These fanatics who will stop at absolutely nothing to cause death and destruction on a mass scale” (speech 4). ‘They’ hate ‘us’ and everything ‘we’ and ‘our’ similes stand for: “They disagree with our

way of life, our values and in particular our tolerance. They hate us but probably hate those Muslims who believe in tolerance, even more, as apostates betraying the true faith.” (speech 7C). The terrorist’s aim is to spread discord and destruction: “Its purpose is now plain: to provoke civil war” (Speech 8). In short, the enemy endorses an “evil ideology” (speech 6) and is prepared “to bring about Armageddon” (speech 4). Therefore, the possibility of compromise or communication between “us” and “them” is excluded altogether: “There is no compromise possible with such people, no meeting of minds, no point of understanding with such terror” (Speech 1).

Ultimately, in Blair’s view, the differentiation between friends and enemies boils down, not so much to a clash of civilisations but to a “clash *about* civilisation” (speech 7A; italics added). It is a “clash between extremism and progress”, “a life and death battle for freedom”, “a battle about modernity” and “a battle of values and progress” (speech 7A.). Terrorism is perceived as an existential threat to the modern way of life and its liberal and hedonistic values. According to Blair, “all civilised people, Muslim or other, feel revulsion at it” (speech 6). By implication, terrorists are banned from civilization, the “entire international community” and probably – as agents of “evil”³ – from humanity as well.⁴

In order to justify the extraordinary measures to be taken against terrorism, roughly speaking, Blair resorts to two different types of discourse: on the one hand a *discourse of exception* in which he argues that an exceptional threat requires an exceptional response and a *discourse of normalcy* in which he states that, although the threat is exceptional, the response remains safely within the ‘ordinary’ boundaries of custom, morality and the Rule of Law (and, if not, these boundaries have to be stretched somewhat to make it fit). Drawing from the discourse of exception, Blair claims that “we” are facing a “new type of war”⁵ that “will rest on intelligence to a great degree than ever before. It will rest on intelligence to a greater degree than ever before. It demands a different attitude to our own interests. It forces us to act even when so many comforts seem unaffected, and the threat so far off, if not illusory” (speech 4). The exceptional threat – apparently distant but nevertheless “real and existential” (*ibid.*) – requires “us” “to be prepared to think sooner and act quicker” if “we” want to defend ‘our’ values. What is needed is “progressive pre-emption” (speech 7C). “We” have no other choice than to fight: “We can no more opt out of this struggle than we can opt out of the climate changing around us” (speech 7A). “If we want to secure our way of life, there is no alternative but to fight for it” (speech 7B). Blair compares terrorism to a virus: “The virus is terrorism whose intent to inflict destruction is unconstrained by human feeling and whose capacity to inflict it is enlarged by technology” (speech 3). If ‘we’ do not stop this virus, the result will be disorder: “Our new world rests on order. The danger is disorder. And in today’s world, it can now spread like contagion” (speech 3). It is ‘our’ duty to act: “The global threat to our security was clear. So was our duty: to act to eliminate it” (speech 4). Everything “we” can do to avert the threat, “we” have to do: “We should take what security measures we can” (speech 6).

Though often invoking a ‘we’, it is clear that, in crucial moments, Blair is primarily thinking of himself – in his capacity of UK’s Prime Minister and one of the world’s leaders – as the one who has to act, while others may “err on the side of caution” (speech 4). In defence of his decision to go to war in Iraq, Blair argues that it is the task of leadership to expose and fight the global threat of terrorism. He acknowledges that the invasion in Iraq stirs “bitter emotions” in his own country and may be “ill-fitting the pre-occupations of the man and

³ In speeches by US President Bush the ‘evil’ theme is even more present (see Mral 2004, p. 20–22).

⁴ As Schmitt (1996a, p. 37) notices, an intensification of the friend-enemy distinction may lead to pleas for the “endgültig letzten Krieg der Menschheit” (that is, the “absolute last war of humanity”, Schmitt 1996b, p. 36).

⁵ In contrast to Bush (see Mral 2004, p. 17–20), Blair rarely uses the expression ‘war’ and never speaks of a ‘war on terror’, but prefers seemingly softer notions like a ‘battle’ or a ‘fight’ against terrorism.

woman on the street” (*ibid.*). However, that does not prevent him from taking the measures he deems necessary, building on his own judgment. By taking the decision to participate in Iraq’s invasion, Blair puts an end to a potential endless deliberation in an authoritarian and authoritative manner:

Prime Ministers don’t have the luxury of maintaining both sides of the argument. They can see both sides. But, ultimately, leadership is about deciding . . . Do we want to take the risk? That is the judgment. And my judgment then and now is that the risk of this new global terrorism and its interaction with states or organisations or individuals proliferating WMD [Weapons of Mass Destruction], is one I simply am not prepared to run. (*Ibid.*)

Besides appeals to his leadership and personal judgment as a last resort (“ultimately”), Blair persistently tries to get a broad support for his decisions by using the discourse of normalcy. In defending his anti-terror approach, he draws his main arguments from both shared ideals and shared interests. In this way, as he puts it, “a happy marriage of conviction and *Realpolitik*” is created (speech 8). As a matter of fact, Blair states that “we” have a shared interest in the world’s orderliness in particular for economic reasons: “All of us have an interest in stability and a fear of chaos. That’s the impact of interdependence” (speech 7C). Here, British self-interest collides with the world’s general interest. Therefore, “we” have to fight terrorism collectively on a global scale and take away the causes of its growth, such as poverty and inequality. Moreover, as Blair would argue soon after 9/11 (speech 1), it is “our” “moral duty” to fight for the values ‘we’ believe in, especially freedom and justice: “So I believe this is a fight for freedom. And I want to make it a fight for justice too. Justice not only to punish the guilty. But justice to bring those same values of democracy and freedom to people round the world”. In a communitarian vein,⁶ Blair argues that the “power of community” should be combined with justice in order to become a “moral power”. In his view, justice consists of “fairness and people of equal worth . . . but also reason and tolerance”. These values are not specifically Western as some opponents have claimed, but are endorsed by the whole of humanity: “Ours are not Western values, they are universal values of the human spirit. And anywhere . . . the choice is the same: freedom not tyranny; democracy, not dictatorship; the rule of law; not the secret police” (speech 3). The best way to defend “our” security is by spreading these universal values all over the world (speech 4). “The only way to win is: (...) to defeat it by values and ideas set in opposition to those of the terrorists” (speech 7A). In other words:

To win, we have to win the battle of values, as much as arms. We have to show these are not Western still less American or Anglo-Saxon values but values in the common ownership of humanity, universal values that should be the right of the global citizen. (Speech 7B)

This quote marks the transition from the moral to the legal sphere: universal values, such as freedom and justice, should be “the *right* of the global citizen” (*italics added*). By using a normative phrase (“should be”), Blair acknowledges explicitly that citizens worldwide are not, or not yet, legally entitled to these fundamental values. However, in other passages he makes it appear as if these values are already law: “We are fighting for the inalienable right of humankind – black or white, Christian or not, left, right or a million different – to be free (...)” (speech 3). Particularly in his defence of Iraq’s invasion, Blair displays an ambivalent stance towards the law. On the one hand, he claims the invasion to be in full accordance with the right of self defence, as granted by international law:

⁶ Whether New Labour under Blair really reflected, or was influenced by, communitarian thought is debatable (see MacMillan 2007).

The best defence of our security lies in the spread of our values. But we cannot advance these values except within a framework that recognises their universality. If it is a global threat, it needs a global response, based on global rules. The essence of a community is common rights and responsibilities. If we are threatened, we have a right to act. And we do not accept in a community that others have a right to oppress and brutalise their people. We value the freedom and dignity of the human race and each individual in it. (...) Emphatically I am not saying that every situation leads to military action. But we surely have a duty and a right to prevent the threat materialising; and we surely have a responsibility to act when a nation's people are subjected to a regime such as Saddam's. (Speech 4.)

Moreover, Blair argues that Iraq contravened UN resolution nr. 1441. Therefore, it was UK's duty to intervene: "We had to force conformity with international obligations that for years had been breached with the world turning a blind eye" (*ibid.*). "Our primary purpose was to enforce UN resolutions over Iraq and WMD" (*ibid.*).

On the other hand, Blair pleads for amending the existing international law in order to provide for a legal justification of interventions like this. He claims that "the rule book of international politics has been torn up":

Interdependence – the fact of a crisis somewhere becoming a crisis everywhere – makes a mockery of traditional views of national interest. (...) [These challenges] can only be effectively tackled together. And they require a pre-emptive and not simply reactive response. (...) What is more such action will often require intervention, far beyond our own boundaries. (...) What this means is that we have to act, not react; we have to do so on the basis of prediction not certainty (...). And what all that means is: that this can't be done easily unless it is done on an agreed basis of principle, of values that are shared and fair. (Speech 7C.)

The basic problem Blair has with international law as it is, is that it does not sanction a pre-emptive response:

It may well be that under international law as presently constituted, a regime can systematically brutalise and oppress its people and there is nothing anyone can do, when dialogue, diplomacy and even sanctions fail, unless it comes within the definition of a humanitarian catastrophe (though the 300,000 remains in mass graves already found in Iraq might be thought by some to be something of a catastrophe). *This may be the law, but should it be?* (Speech 4; italics added.)

Therefore, in his view, the United Nations have to be reformed: "It means reforming the UN so its Security Council represents 21st century reality; and giving the UN the capability to act effectively as well as debate" (*ibid.*). "The Security Council should be reformed. We need a new international regime on the non-proliferation of WMD" (speech 3).

When confronted with legal objections against his course of action, Blair responds by referring to the allegedly political bias of his critics: "The lawyers continue to divide over it – with their legal opinions bearing a remarkable similarity to their political view of the war" (speech 4). The cause seems to justify the means: "It is a cause that has none of the debatable nature of the decisions to go for regime change; it is an entirely noble one – to help people in need of our help in pursuit of liberty; and a self-interested one, since in their salvation lies own security" (speech 7). Here we find again (as earlier in this section) an allusion to "a happy marriage of conviction and *Realpolitik*": by liberating other people, "we" protect "our" own security.

3. Zapatero's Rhetoric of Normalcy

In contrast to Blair, Zapatero was not in charge when the 9/11 terrorist attacks took place. At that time he was leader of the Partido Socialista Obrero Español (PSOE), the main party of the opposition, while José María Aznar was Prime Minister of the Spanish government. Zapatero

took office after the terrorist attacks in 2004 and to some extent because of these attacks – benefiting from his promise to stop supporting Bush’s ‘war on terror’ and to withdraw Spanish troops from Iraq.

Like Blair, Zapatero often makes use of inclusive speech. He uses a collective ‘we’ to refer to the government he presides: the people of Spain, the democratic western citizens, all the civilized people (in contrast with terrorist and terrorist supporters). When Zapatero addresses the Spanish people he portrays his government as one in which “no one feels excluded”:

[A government that] listens to and pays attention to [citizens]; that always explains the reason of every decision adopted. It will be a Government who respects citizens, listens to their voices and criticisms no matter how hard they are. (Speech 13.)

This openness to dialogue exists only among ‘us’, the Spanish society, “a tolerant, non-clerical, educated and developed society as it should be ours” (*ibid.*). Whereas ‘we’ are ‘civilized’, ‘they’, the terrorists, represent the negation of everything we stand for:

[T]errorism is, in my opinion, the negation of democracy, terrorism is the negation of progress, terrorism is the negation of freedom, terrorism is the negation of speech which has made human being, the society and the civilization stronger. (speech 14.)

Thus, terrorists are excluded from the ‘we’ because it is not possible to reach a consensus with ‘them’. ‘They’ are not rational:

[T]here is no reason in terrorism; there is no sense in terrorism; there is no politics in terrorism. There is only terror, death, blackmail. There is only will to control, to subjugate, to destroy the morality of men, to eliminate their convictions. (Speech 13.)

The open dialogue Zapatero is pleading for is meant to take place only among ‘us’, the democratic people seeking unity. According to him, “the unity of democrats is the fundamental element in the fight against terrorism” (*ibid.*). As a member of the opposition, he tried to achieve when he proposed the ‘Pact of freedoms and against terrorism’ on the following ground: “if we are joined we could beat terrorism. And that union is one of the most efficient weapon to achieve that goal” (speech 17).

From the very beginning Zapatero has tried to face international terrorist issues with this strategy of dialogue. Zapatero’s ‘big’ project was the ‘Alliance of Civilizations’: a ‘forum’ inside the UN structure to promote a dialogue among different civilizations in opposition to the ‘clash of civilizations’ announced by some American intellectuals. This forum allowed drawing a new line between the ‘civilized’ Arab world and Islamic terrorist groups such as Al Qaeda and governments who supported them. According to Zapatero, these terrorist groups are not “Islamic terrorism” but “international terrorism”: “[I]t is a great mistake with regard to all those people who profess that religious feeling that the category ‘Islamic’ is considered as qualifying a type of terrorism” (speech 14). Terrorist groups “do neither deserve to be recognised as followers of a religion (...) nor of a nation or of the people” (*ibid.*), they are just a bunch of “fanatics who are ready to kill to impose their madness through force. Ready to disseminate the seed of evil” (speech 15).

Despite his exclusionary rhetoric, Zapatero did open up occasionally the dialogue with the armed Basque separatist movement ETA. From the very beginning of his presidency he

was engaged in an ambivalent process of negotiation. While the Spanish judiciary power banned political parties, NGOs and other social organizations linked with the Basque Separatists, a group of international negotiators tried to reach a peaceful solution with Zapatero's approval. However, after ETA broke the cease-fire period in December 2006 Zapatero declared that "there will be no dialogue" (speech 20) and so ETA has definitely being excluded from the possibility to become a part of the 'us'.

After having won the elections in 2004, Zapatero offered a speech of rational dialogue in reaction against his predecessor Aznar, who had supported Bush's military interventions. Zapatero argued for counter-terrorism policies with respect for the Rule of Law and human rights. This respect is unconditional because:

neither a democratic conviction will be put under question by terrorism actions, nor a democratic law could be changed because of terrorism actions, or a democratic practice can be altered because we are in combat against terrorism. (Speech 14.)

In the international sphere this commitment with the legality implies that

Spain will assume the international obligations that corresponds to it in the defence of peace and security. Spain will always have one simple requirement: a previous decision of the United Nations or from any other organisation with multinational character. (Speech 13.)

Therefore, despite his retirement of Spanish troops from Iraq, Zapatero has kept Spanish troops in Afghanistan and has even increased the amount of military power.

In the domestic sphere Basque terrorism is fought through "the activity of State Security Forces and Justice and (...) by the loss of social support to violence" (speech 20). An important consequence of this strategy is that since 2002 five Basque political parties – supposed to be linked with ETA – have been banned.⁷

One major feature of Zapatero's anti-terrorism policy is his believe in its legal foundation. He points out that "the response can only be from the law, that is to say, that the response can only be from democracy" (speech 14). However, although Zapatero repeatedly refers to the Rule of Law in Spain, there has been denouncements of violation of human rights in the fight against terrorism by the Basque human rights NGOs but also by prestigious international NGOs such as Amnesty International⁸ and Human Rights Watch⁹ and by United Nations Special Rapporteurs on Torture Theo Van Boven and Manfred Nowak¹⁰.

Prima facie Zapatero's claim to act in accordance with the Rule of Law seems to contradict the reports on human rights violations by the Spanish government. However, to understand Zapatero's claim we have to take into account that the Spanish Constitution not only recognizes the state of exception as most constitutions do but also regulates a permanent exception with regard to terrorism issues in Article 55 II. This article regulates limitations to

⁷ These parties represent 15% of the electorate, with approximately 150,000 votes. If the assumption is correct that those parties 'are' part of ETA this organization has an important support among Basque population.

⁸ See Amnesty International Report 2008 available at: <http://thereport.amnesty.org/document/101>.

⁹ Human Rights Watch report "Setting an Example? Counter-Terrorism Measures in Spain", available at: <http://www.hrw.org/en/reports/2005/01/26/setting-example>.

¹⁰ United Nations Special Report on Torture after visiting Spain in October 2003, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G04/107/16/PDF/G0410716.pdf?OpenElement>. Follow-up report 2006 by Special Rapporteur Manfred Nowak, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/119/12/PDF/G0611912.pdf?OpenElement>.

fundamental rights – e.g., longer periods of arrest, *incommunicado* detentions, possibility to intercept the suspect's correspondence or any other communication and to enter in any building without a search warrant – in the prosecution of individuals in relation with investigations of terrorist crimes. From the very beginning of its democracy, Spain provided provisions that allowed for exceptional measures and these constitutional restrictions were regulated in special anti-terrorism acts. In a process of normalisation of the exception in 1988 anti-terrorism acts were promulgated and their provisions were included in the 'normal' legislation, the Criminal Code and Procedure Criminal Law. The rulings of judges applying legal norms which were originally exceptional measures are now regarded as 'normal'.

Furthermore, the exception is institutionalized by the modification of the law and its interpretation. A paradigmatic example is the banning of political parties linked with terrorist organization ETA. The Spanish Constitution allows the banning of organizations – and political parties fall into this category – only when they are catalysts of criminal activities. So, the law which regulated political parties required a criminal sentence previous to the banning. Since 1998 there was an outgoing criminal investigation on the links between Batasuna - a Basque radical separatist political party - and ETA. However the investigation advanced slowly. As a consequence of Zapatero's *Pact of freedoms and against terrorism* (see above), a new Act for regulating political parties was accepted. The Act introduced a whole new spectrum of conducts liable to ban the political party in question. In contradiction to the Spanish Constitution, all these conducts introduced are licit, but the Act considers them as indicators of the party support of terrorist groups. The Act also introduced a new procedure for the banning of political parties with less legal safeguards. For instance, no longer a previous criminal sentence was required.

In 2002, after the promulgation of the Act, the judge responsible for the old outgoing criminal investigation finally decided to suspend all Batsuna activities. This clearly demonstrates the political dimension of the law enforcement. About this process of banning Basque political parties Zapatero says that “[t]he prosecutors present their accusations based on their opinion, their legal understanding and their professionalism” (speech 18). Moreover, he claims that his government is only responsible to “appoint the State General Prosecutor and to indicate a criminal policy to follow. What are the basic objectives of that criminal policy? Evidently: to fight against terrorism” (*ibid.*). Although Zapatero tried to present counter terrorism measures as objective law enforcement with a minimum of political , under his leadership legislation has been introduced that contravenes fundamental constitutional rights. Consequently, even when formal rule of law is maintained the substance of law is modified or re-interpreted according political needs.¹¹

Zapatero's rhetoric based on the rule of law is reinforced with militant arguments based on democracy. So, it is not only the rule of law but in fact democracy itself what is at stake in the fight against terrorism: “[N]obody in a democracy can engage in the political life and the institutions representing acronyms [implying ETA] that imply a lack of respect to democratic values”(speech 21). And people who do not respect that are banned “in defence of a democratically ordered system of values such as freedom and security” (*ibid.*).

Another example showing the underlying political interests of Zapatero's “legal” strategy is his response to the criticism he received due to the treatment towards a former

¹¹ Beside the case of Batasuna that we presented above the case of other two Basque political parties during the period of 2007-2008 it's paradigmatic. In 2007 they were allowed to present to elections – though some of their local candidatures were banned – and a year afterwards, after negotiations failed completely the same political parties were banned.

Basque terrorist leader De Juana Chaos. De Juana Chaos was found guilty of various terrorist crimes and condemned to prison. According to the Spanish Prison Law, in 2006 he had the right to finish the rest of his sentence under the regime of parole. However, a powerful NGO, named *Asociación Víctimas del Terrorismo* (Terrorism Victims Association), and the *Partido Popular* (PP) pressured the government to keep De Juana Chaos in prison on the ground that he had not publicly expressed repentance. Pushed by public opinion, Zapatero's government solved the problem by presenting new accusations against him in the same month he was meant to leave prison on parole. State prosecutor accused De Juana Chaos of committing apology of terrorism in two articles he had written a month before in a Basque newspaper. Facing a possible new sentence of 96 years of prison he started a hunger strike in protest against these accusations. At that time ETA was under the cease-fire and in negotiations with the Spanish Government. Within this political context the accusation of the Prosecutor changed from 96 to 3 years. De Juana Chaos continued to be the centre of polemics between the government and the opposition party since his hunger strike forced the government to let him recover in a hospital in the Basque Country against the policy of preventing Basque terrorist criminals to serve their sentences in the Basque territory. Zapatero was severely criticized because these measures were considered a surrender to terrorist demands. He defended himself by saying that this was just the 'enforcement of the law'. However, being tired of the criticism he received by the PP he said that during the "former Government they reduced his sentence with one year for writing a book that glorifies terrorism" (speech 18). During his government, however, Zapatero claims: "for writing one or two articles where he does the same he receives three years of prison" (*ibid.*).

As a result, Zapatero overall rhetorical strategy aims to portray the fight against terrorism as nothing else than 'just' law enforcement. However, exceptional measures normalised in the Spanish Constitution including *incommunicado* detentions, the banning of Basque political parties and the treatment of De Juana Chaos' hunger strike contradicts this Zapatero's normalcy portray of Spanish fight against terrorism,.

4. Words Don't Come Easy

Both Spain and Great Britain have a long time experience with terror originating from inside of their own political systems. However, Spain under Zapatero took another route than the British government under Blair. Zapatero departed from Aznar's and Blair's course following the United States and their 'coalition of the willing' in fighting international forms of terrorism. In response to the growing criticism toward the US anti-terrorism policy Zapatero altered his stance and adapted his rhetoric accordingly, and became a 'strong' defender of the Rule of Law. Obviously, this had to do with his mandate that he received in the 2004 election. But what seems to be even more important is the change of perspective: Zapatero took the opportunity to combine the problems of national and international terrorism and focused on the first. In this sense he did not need to declare the 'state of exception' like Blair in order to execute special measures, simply because Spain has conserved from Franco's time the exception in terrorist issues.

Whereas Blair was using the rhetoric of exception sustained by moral and political arguments in order to justify his policy and to mobilize consent and support for it at the same time, Zapatero normalized the exception by paying respect to internationally acknowledged standards of the Rule of Law. Both political leaders masterfully managed the discourse of inclusive speech, but for different purposes: Blair tried to build a consensus for a state of exception allowing to introduce a just cause reasoning into the international law. Zapatero

used an existing consensus (about the Rule of Law) to broaden the consensus for his way of dealing with the problem of national terrorism in Spain.

With the benefit of hindsight, these rhetorical strategies turned out not to be persuasive in the long run: the British people were to a growing extent dissatisfied with Blair's agenda supporting the United States in their fight against terrorism (as his steady decline in popularity clearly demonstrates¹²), and there is a increasing lack of support in Spain (with the exception of the Basque country) for reopening negotiations with the ETA, after Zapatero's earlier failed attempts.¹³ These rhetorical failures are mainly due to the 'logic' of symbolic power. If the inclusive speech both of them used in the wake of terrorist attacks is contradicted by an eroding consensus, the weakness of symbolic power becomes apparent. To be sure, inclusive speech is essential element of political rhetoric in general. Therefore, its exploitation by Blair and Zapatero was nothing exceptional. Instead, it was the exception – the exceptional threat of terrorism – that both leaders enabled to use the anti-terror consent of the people for their own purposes, either to fight terrorism on a global scale (Blair) or at home (Zapatero). But this process of consensus building turned out to be fragile. Critics soon reclaimed the stage and redefined the battle field: in Blair's case they demanded a return to a state of normalcy where the Rule of Law holds sway, whereas in Zapatero's case they dismantled his attempt to normalize the exception. It seems that whenever there is a critical auditorium symbolic power based on inclusive speech is itself an exception. It may be persuasive for a while, but it will never last.

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¹² For some statistics, see: The Long Decline: Tony Blair's popularity, *Guardian*, 25 April 2007, <http://politics.guardian.co.uk/flash/page/0,,2065152,00.html/>.

¹³ In February 2006 77% of the Spanish people supported negotiations with ETA. See: http://www.elpais.com/elpaismedia/ultimahora/media/200602/20/espana/20060220pepunac_1_Pes_OTR.mht. In March 2007, two months after the end of the cease fire by ETA and a month before the general elections only 48% of the Spanish people supported to open new negotiations with ETA. See: <http://www.opina.es/web/pdfs/90070%20E.pdf>.

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APPENDIX: Speeches, Interviews, Statements

TONY BLAIR

1. Speech delivered at the Labour Party Conference, 2 October 2001, available at: <http://www.guardian.co.uk/politics/2001/oct/02/labourconference.labour6>
2. Statement on military action in Afghanistan, 7 October 2001, available at: www.guardian.co.uk/world/2001/oct/07/afghanistan.terrorism11
3. Speech delivered at the US Congress, 17 July 2003, available at: <http://edition.cnn.com/2003/US/07/17/blair.transcript/>
4. Speech delivered in Blair's Sedgefield constituency, 5 March 2004, available at: www.guardian.co.uk/politics/2004/mar/05/iraq.iraq
5. Statement to UK Parliament on the London bombings, 11 July 2005, available at: www.number10.gov.uk/Page7903
6. Speech delivered at the Labour Party national conference, 16 July 2005, available at: <http://news.bbc.co.uk/1/hi/uk/4689363.stm>
7. A: Foreign Policy Speech I, London, 21 March 2006, available at: <http://www.number10.gov.uk/Page9224>
B: Foreign Policy Speech II, London, 27 March 2006, available at: www.number10.gov.uk/Page9245
C: Foreign Policy Speech III, London, 26 May 2006, available at: www.number10.gov.uk/Page9549
8. Speech delivered at the Lord Mayor's Banquet, London, 13 November 2006, available at: <http://www.number10.gov.uk/Page10407>

JOSÉ MARÍA AZNAR

9. Delivered at Palacio de la Moncloa, 12 September 2001, available at: http://www.maec.es/SiteCollectionDocuments/Fotos_Actualidad_Prensa_y_Documentacion/PDF/revistas/2001/C2.pdf 8 (pp. 212-213)

JOSÉ RODRÍGUEZ ZAPATERO

10. Congress of Deputies, 26 September 2001, available at: http://www.congreso.es/public_oficiales/L7/CONG/DS/PL/PL_107.PDF
11. Congress of Deputies, 5 February 2003, available at: http://www.congreso.es/public_oficiales/L7/CONG/DS/PL/PL_222.PDF
12. Congress of Deputies, 5 March 2003, available at: http://www.congreso.es/public_oficiales/L7/CONG/DS/PL/PL_231.PDF
13. Assumption speech as President of the Government, Congress of Deputies, 15-04-2004, available at: http://www.congreso.es/public_oficiales/L8/CONG/DS/PL/PL_002.PDF
14. Speech delivered in a summer course on "The fight against terrorism and its limits" of the Complutense University at San Lorenzo del Escorial, 16 July 2004, available at: <http://www.la-moncloa.es/Presidente/Intervenciones/Discursos/p1607040.htm>
15. Statement to the general debate of the United Nations General Assembly, 21 September 2004, available at:

- <http://www.la-moncloa.es/Presidente/Intervenciones/Discursos/p2109041.htm>
16. Press conference, Palacio de La Moncloa, 10 February 2006, available at:
<http://www.la-moncloa.es/Presidente/Intervenciones/ConferenciasdePrensa/Rdez.+Zapatero+Rueda+Moncloa+100206.htm>
 17. Speech given at the Congress of Deputies, 15 January 2007, available at:
http://www.congreso.es/public_oficiales/L8/CONG/DS/PL/PL_227.PDF
 18. Interview by Carlos Herrera from Onda Cero radio, 15 March 2007, available at:
<http://www.la-moncloa.es/Presidente/Intervenciones/Entrevistas/pren20070315.htm>
 19. Statement to the press, Palacio de La Moncloa, 7 March 2008, available at:
<http://www.la-moncloa.es/Presidente/Intervenciones/Discursos/prdi20080307.htm>
 20. Interview by *El Pais*, 29 June 2008, available at:
<http://www.psoe.es/ambito/saladeprensa/docs/index.do?action=View&id=203885>
 21. Press conference at the Congress of Deputies, 16 September 2008, available at:
<http://www.la-moncloa.es/Presidente/Intervenciones/ConferenciasdePrensa/prrp20080916.htm>
 22. Statement to the press, Palacio de La Moncloa, 3 December 2008, available at:
<http://www.la-moncloa.es/Presidente/Intervenciones/Otros/prot20081203.htm>